

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

Charlton Jennings, Plaintiff	:	Civ. No. 02-195 Erie
	:	
vs.	:	
	:	
Les Fetterman, Officer	:	
	:	
In his individual capacity	:	
	:	
Defendant	:	
	:	
vs.	:	Civ. No. 02-196 Erie
	:	
Terry Dawley, Officer	:	
	:	
Defendant	:	
	:	
vs.	:	Civ. No. 02-210 Erie
	:	
Erie County	:	
	:	
District Attorneys Office	:	
	:	
D.A. Brad Foulk and	:	
	:	
Ex- EPD, Chief Paul De Dionisio	:	

APPLICATION FOR LEAVE OF COURT TO FILE AND PROCEED ON APPEAL IN FORMA
PAUPERIS AND FOR APPOINTMENT OF COUNSEL

To the Honorable Maurice B. Cohill, Judge of the above said court:

And now, this 21st day of December, 2005, comes Plaintiff, Charlton E. Jennings, Pro Se, respectfully files the foregoing document and reprents:

- 1.) that plaintiff is currently incarcerated in S.C.I. Somerset.
- 2.) the plaintiff is proceeding Pro se, in the above captioned case.
- 3.) plaintiff's financial condition has not changed since the Honorable court granted him the right to proceed In Forma Pauperis.

4.) the plaintiff wishes to raise the following issues on appeal:

- (1.) Whether the court abused it's discretion in dismissing the plaintiff's civil action, for failure to state a claim. When plaintiff has stated such claims upon which he is entitled to relief.
- (2.) Whether the court erred and abused it's discretion, in failing to proceed with trial after plaintiff successfully defended against the defendant's motion to dismiss/ motion for summary judgement.

5.) the plaintiff is unlearned in law, and the issues involved are complex. Thus, the plaintiff requires the assistance of a qualified attorney to represent him on appeal.

6.) the defendant's will suffer no prejudice.

Wherefore, plaintiff respectfully moves this honorable court to grant him leave to file and proceed on appeal In Forma Pauperis, and to appoint counsel for purposes of appeal.

Respectfully Submitted:



12-21-05

Charlton E. Jennings

1600 Walters Mill Rd.

Somerset, PA. 15510

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

Charlton Jennings, Plaintiff	:	Civ. No 02-195 Erie
vs.	:	
Les Fetterman, Officer	:	
In his individual capacity	:	
Defendant	:	
vs.	:	Civ. No 02-196 Erie
Terry Dawley, Officer	:	
Defendant	:	
vs.	:	Civ. No 02-210 Erie
Erie County	:	
District Attorneys Office	:	
D.A. Brad Foulk and	:	
Ex- EPD, Chief Paul De Dionisio	:	

ORDER TO TRANSMIT TRIAL COURT RECORD

To the Honorable Maurice B. Cohill Jr., Judge of the above said court:

And now this _____ day of _____, 2005, an appeal having been filed in the above captioned case, the clerk's office is hereby ordered to forward a certified copy of the trial court record to the third circuit court of appeals.

/s/ _____

Hon. Maurice B. Cohill

VERIFICATION

I hereby verify this 21st day of December 2005, that the facts set forth in the forgoing document are true and correct, and are made subject to the penalty of perjury.

/sk 
Charlton E. Jennings 12-21-05

Pro Se

S.C.I. Somerset

1600 Walters Mill Rd.

Somerset, PA. 15510

PROOF OF SERVICE

I hereby certify, this 21st day of December 2005, that I am serving a true and correct copy of the foregoing document upon the persons below.

Clerks Office

U.S. District Court

Pittsburgh, PA. 15219

Honorable Judge Maurice B. Cohill

and

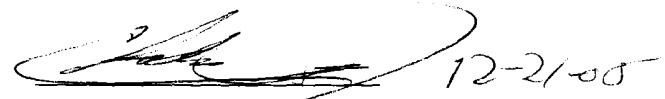
Western District Judge

Pittsburgh, PA. 15219

cc: Gerald J. Villela, Esquire
826 State Street
Room #505
ERIE, PA. 16501

cc: D. Jonathan Long, Esquire
626 State Street
ERIE, PA. 16501

Filed Pro Se by:



12-21-05

Charlton Jennings

Plaintiff, Pro Se

S.C.I. Somerset

1600 Walters Mill Road

Somerset, Pennsylvania

15510

CC: Gerald J. Villele, Esquire

826 State Street

Room # 505

Erie, PA. 16501

CC: D. Jonathan Long, Esquire

626 State Street

Erie, PA. 16501

Finally, we also dismiss Plaintiff's claim that his Fourth Amendment rights were violated by Defendants causing a surgical intrusion on his body to recover a bullet without his consent and without prior notification to his attorney. The record evidence demonstrates that because Plaintiff was experiencing pain he sought a court order requiring the Erie County Prison to permit outside doctors to examine him and remove the bullets if medically necessary. The record evidence also shows that the decision to remove the bullet from Plaintiff was made by medical personnel for medical reasons. Thus, there is no genuine issue of material fact that no Defendant had any involvement in the surgical intrusion into Plaintiff's body to remove a bullet from his body and to leave another bullet in his body. Under these facts, there can be no Fourth Amendment violation and Plaintiff's claim must be dismissed.

IV. Conclusion

We conclude as a matter of law that Plaintiff has no viable cause of action against any of the remaining Defendants. Accordingly, we will dismiss Plaintiff's claims and dismiss this action.

The following Order is therefore entered.

AND NOW, to-wit, this 21 day of November, 2005, for the reasons in Opinion accompanying this Order, it is hereby ORDERED, ADJUDGED, and DECREED that Plaintiff's claims asserted against the Defendants are dismissed as a matter of law. Judgment is entered in favor of Defendants and against Plaintiff.

IT IS FURTHER ORDERED that Plaintiff's Motions to Compel Previous Requested Discovery Exhibits Prior to November 30, 2005 Pre-Trial Hearing, and Defendants' Motions in Limine are hereby denied as moot.

The Pretrial Conference set for November 30, 2005 at 2:30 p.m. is hereby cancelled.



Maurice B. Cohill, Jr.
Senior United States District Judge

cc: Charlton Earle Jennings, pro se
ES-9735
SCI Somerset
1600 Walters Mill Road
Somerset, PA 15510-0002

David Jonathan Long, Esq.
626 State Street
Erie, PA 16501

Gerald J. Villella, Esq. (by electronic mail)

Matthew J. McLaughlin, Esq. (by electronic mail)